



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-0698]

RIN 1625-AA09

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operations of two New Jersey Department of Transportation (NJDOT) bridges: The Route 30/Absecon Boulevard Bridge across Beach Thorofare, NJICW mile 67.2 and the US 40-322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0, both at Atlantic City, NJ. The change will alter the dates that these bridges are allowed to have delayed openings or remain in the closed position to accommodate heavy volumes of vehicular traffic due to the annual July 4th fireworks shows and the annual Air Show at Bader Field.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0698 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0698 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Regulatory Information

On August 12, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ in the Federal Register (76 FR 50161). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

NJDOT has requested a change in the operating regulations of the Route 30/Absecon Boulevard Bridge across Beach Thorofare, NJICW mile 67.2 and the US 40-322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0,

both at Atlantic City, NJ. The two Atlantic City July 4th fireworks shows and the Air Show at Bader Field are annual events held at Atlantic City and heavy volumes of vehicular traffic transit across both bridges to attend them. This rule allows the above mentioned bridges to remain in the closed position from 9:40 p.m. through 11:15 p.m. on July 4th or on July 5th should inclement weather prevent the fireworks event from taking place as planned. This rule also allows the above mentioned bridges to open every two hours on the hour from 10 a.m. through 4 p.m. and to remain in the closed position from 4 p.m. through 8 p.m. on the third or fourth Wednesday of every August during the annual Air Show at Bader Field. The exact dates of the closures will be published locally in the Local Notice to Mariners and Broadcast Notice to Mariners.

The Route 30/Absecon Boulevard Bridge is a bascule drawbridge with a vertical clearance of 20 feet above mean high water in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.733(e) and was last amended in April 2009. The operating regulation states that the bridge shall open on signal if at least four hours of notice has been given, except that from April 1 through October 31 the bridge need only open on the hour from 7 a.m. to 11 p.m.

The US 40-322 (Albany Avenue Bridge) is a bascule drawbridge with a vertical clearance of 10 feet above mean high water in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.733(f) and was last amended in April 2009. The current operating regulation states that year-round from 11 p.m. to 7 a.m.; and from November 1 through March 31 from 3 p.m. to 11 p.m. the draw need only open if at least four hours notice is given. In addition from June 1 through September 30 the draw of the bridge need only open on the hour and half hour from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m.; and from 4 p.m. to 6 p.m. the draw need not open.

Discussion of Comments and Changes

No comments were received on the proposed rule and no changes were made to the proposed rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563,

Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order.

The changes are expected to have minimal impacts on mariners due to the short duration that the drawbridges will be maintained in the closed position and have delayed openings. Both events have been observed in past years with little to no impact on marine traffic. Maintaining the bridges in the closed position for these short time periods is also a necessary measure to facilitate public safety that allows for the orderly movement of vehicular traffic before, during, and after the events.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a

substantial number of small entities.

This action will not have a significant impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge closures can minimize delay. Vessels that can safely transit under the bridges may do so at any time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in the NPRM (SNPRM) we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that

Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.733, revise paragraph (e) and add paragraphs (f)(3) and (4) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway

* * * * *

(e) The draw of the Route 30 Bridge across Beach Thorofare, mile 67.2 at Atlantic City, shall open on signal if at least four hours of notice is given; except that:

(1) From April 1 through October 31, from 7 a.m. to 11 p.m. the draw need only open on the hour.

(2) On July 4, the draw need not open from 9:40 p.m. until 11:15 p.m. to accommodate the annual July 4th fireworks show. Should inclement weather prevent the fireworks event from taking place as planned, the draw need not open from 9:40 p.m. until 11:15 p.m. on July 5th to accommodate the annual July 4th fireworks show.

(3) On the third or fourth Wednesday of August the draw will open every two hours on the hour from 10 a.m. until 4 p.m. and need not open from 4 p.m. until 8 p.m. to accommodate the annual Air Show.

(f) * * *

(3) On July 4, the draw need not open from 9:40 p.m. until 11:15 p.m. to accommodate the annual July 4th fireworks show. Should inclement weather prevent the fireworks event from taking place as planned, the draw need not open from 9:40 p.m. until 11:15 p.m. on July 5th to accommodate the annual July 4th fireworks show.

(4) On the third or fourth Wednesday of August, the draw will open every two hours on the hour from 10 a.m. until 4 p.m. and need not open from 4 p.m. until 8 p.m. to accommodate the annual Air Show.

* * * * *

Dated: NOV 24 2011

WILLIAM D. LEE
Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District

[FR Doc. 2011-32735 Filed 12/21/2011 at 8:45 am;

Publication Date: 12/22/2011]